THE HON'BLE SRI JUSTICE M. LAXMAN

SECOND APPEAL No.158 OF 2021

JUDGMENT:

1. The present appeal has been directed against the judgment and decree dated 20.12.2019 passed in A.S.No.31 of 2014 on the file of VI Additional District Judge, Nalgonda, wherein and whereby the judgment and decree dated 27.10.2014 passed in O.S.No.116 of 2009 by the Senior Civil Judge, Nalgonda, was confirmed. The said suit was filed by the plaintiffs/appellants herein for declaration, recovery of possession and cancellation of decrees in O.S.No.100 of 1988 and O.S. No.1306 of 1988 on the file of District Munsiff, Nakrekal. The said suit was dismissed by the Primary Court and confirmed in the first appeal. Hence, the present second appeal.

2. The present appeal is at the instance of the plaintiffs. The respondents herein are the defendants. For brevity, the ranks of the parties as they were referred in the suit, is maintained.

3. The sum and substance of the case of the plaintiffs is that the father of plaintiff No.1 by name Ramkishan Rao was the absolute owner and possessor of the suit lands. He died leaving behind three sons and two

daughters. The suit lands were fell to the share of the plaintiff No.1 and his brother Panaganti Pattabhi Rama Rao, and 2nd plaintiff is son of P. Pattabhi Rama Rao. According to them, the suit lands were given on Batai basis to the defendant Nos.1 and 2 and they had been cultivating by sharing the crop. From 2008 onwards, the defendants stopped the payment of crop share, as such, they entertained a doubt and verified the records and found that the defendants obtained a fraudulent decrees in O.S.No.100 of 1988 and 1306 of 1988 in respect of the suit lands. The suit lands are to an extent of Ac.2.02 gts., forming part of Sy.Nos.36, 37, 63 and 64 situated at Bandapalem Village, Kathepally Mandal, Nalgonda District. On the basis of fraudulent decrees, the defendants obtained mutation entries in the year 1988 and basing on such entries, the defendants asserted adverse title against the plaintiffs, as such, they filed the present suit.

3. The case of the defendants is that the 1st plaintiff and his brother, P. Pattabhi Ram Rao left the village long back and they (plaintiffs) felt that suit lands were unmanageable and unprofitable, as such, they sold out the land in favour of the defendants under SADA BAINAMA in the year 1975. On the basis of said SADA BAINAMA, they filed suit in O.S.No.100 of 1988 and in the said suit, the 1st plaintiff and his brother P.

Pattabhi Rama Rao, filed a written statement admitting the sale. On the basis of such admission, the suit was decreed and subsequently, the 1st defendant sold out his share of land in favour of his wife, 3rd defendant, and basing on such sale, she obtained decree in O.S.No.1306 of 1988 and basing on the said decrees, mutations were effected in the name of defendants in Paisal Patti for the year 1987-1988 and subsequently, they were granted title deeds and passbooks. They have been in possession from 1975 and their title is perfected by way of decrees and mutations in the year 1988 and till date they hold title deeds and pass books.

3.1 The plaintiffs on account of increasing the market value in the locality started reclaiming the properties already sold by them with a false litigation. The defendants also pleaded that the suit filed by the plaintiffs is barred by limitation and further, they have also perfected the title by adverse possession since they have been in possession as hostile to the title of plaintiffs from 1975 onwards or at least from the date of decree and mutations in the year 1988. Therefore, they prayed to dismiss the suit.

4. Basing on the above pleadings, the primary Court framed the following issues:

1. Whether the decree in O.S.No.100 of 1988 is binding on the plaintiffs?

2. Whether the decree in O.S.No.1306 of 1988 is binding on the plaintiffs?

3. Whether the plaintiffs are entitled for declaration of title and recovery of possession of the suit schedule property as prayed for?

5. In order to prove their case, the plaintiffs got examined PWs 1 to 3 and relied upon Ex.A1 to A23. On behalf of defendants, DWs 1 to 3 were examined and got marked Ex.B1 to B19.

6. Both Courts appreciated the evidence on record and found that the case set up by the plaintiffs about the fraud in obtaining decrees in O.S.Nos.100 of 1988 and 1306 of 1988, was rejected. The Courts below also held that the suit is barred by limitation and consequently, the suit was dismissed. In the appeal, it was confirmed. Hence the present Second Appeal.

7. The contention of the learned Counsel for the appellants/plaintiffs is that both the Courts have not appreciated the fact that the fraud vitiates everything. According to him, the decrees were obtained under Ex.A2 and A5. According to him, the written statement under Ex.A4 was filed by impersonating the 1st plaintiff and his brother P. Pattabhi Rama Rao

and in fact, as per Ex.A1 P. Ramakishan Rao died much prior to filing of the written statement. According to him, he died on 15.08.1986. Had the Courts believed Ex.A1, the findings would have been that the decrees were obtained by fraud and fraud vitiates subsequent acts. These aspects were not considered.

7.1 It is also his contention that the Expert's opinion under Ex.A15 and the evidence of Expert (PW3) clearly goes to show that the disputed signatures on written statement under Ex.A16 was found not tallied with the standard signatures on the rental deed under Ex.A17, and the signature of the 1st plaintiff obtained in open Court by the Criminal Court under Ex.A18, A19, A21 to A23. They show that they are not similar to the disputed signatures. The Expert has given finding that both signatures are not matching. Therefore, the case set up by them about playing fraud in obtaining the decree has been established and non- consideration of the above aspects, constitute perversity so as to interfere by this Court.

8. The learned Counsel representing the defendants has contended that both the Courts have appreciated the evidentiary value of Ex.A1 in the light of the admissions made by PWs 1 and 2 in their evidence and both the Courts disbelieved the Ex.A1 for various reasons. One of the reasons was that this Ex.A1 was brought in the year 2009 after plaintiffs

conceived the idea of instituting the suit and further, the evidence of PWs 1 and 2 clearly goes to show that they have been selling the lands in Bandepalem village owned by them by way of SADA sale deeds to various persons. Further, they also obtained pass books in the year 1995 and when they obtained pass books in the year 1995, if there was omission in respect of the suit land and if they felt that their lands were not sold by them, they could have immediately approached the Revenue Authorities for challenging such litigations. The silence of plaintiffs in this regard corroborates the truthfulness of decrees obtained under Ex.A2 and A5.

8.1 Learned Counsel for defendants further stated that the signatures on Ex.A4, written statement were that of the 1st plaintiff and his brother P. Rama Rao and there was no impersonating and both the Courts have rightly appreciated the evidentiary value under Ex.A1 and rightly disbelieved such document in coming to the conclusion that such date of death of Pattabi Rama Rao was not convincingly established. Both the Courts below rightly upheld the validity of decrees under Ex.A2 and A5 and such finding do not suffer from perversity.

8.2. Learned counsel for the defendants also contended that the standard signatures were recently obtained for comparing the signatures on Ex.A4 which are of the year 1988. There is a time gap of nearly 30 years. Even, the Expert in his evidence clearly admitted that there are variations in the standard signatures which are of recent origin. Further, the signature on rental deed was not an admitted signature. The 1st plaintiff was an employee and there were contemporaneous signatures available with the department and those signatures were not taken and if those contemporaneous signatures were taken and compared, the opinion rendered by the Expert could have been given some weightage. According to him, the opinion of the Expert is not a conclusive proof and both the Courts having considered the time gap in between the disputed signatures and standard signatures disbelieved the evidence of the Expert and such findings do not suffer from any perversity.

9. The evidence on record shows that the 1st plaintiff is a Manager in APSRTC, and 2nd plaintiff's father also left from the village in the year 1965 and the evidence also shows that the mother of the 1st plaintiff was staying in the village. The evidence also shows that the 1st plaintiff and his brother sold out other lands which were owned by them in the village by way of SADA sale deeds to various persons. The evidence also

reflects that in 1995, the plaintiffs obtained patta passbooks and those patta passbooks were not filed. Admittedly, suit lands were omitted to make entry in title deed and patta passbook with regard to the suit lands, the plaintiffs would have immediately approached the Revenue Authorities for verification of omissions if really they claim that their suit lands were not sold but this has not been done. This means the plaintiffs were aware of the omission of entries with regard to the suit lands.

10. Ex.A8 Paisal Patti shows that mutations were effected in the name of defendants in the year 1987-88. From 1988 onwards, the revenue records reflect the defendants' name as pattedars and possessors. The plaintiffs also failed to establish that the suit lands were not given on Batai basis. There is no detail when the suit lands were given on Batai basis and no amount of convincing evidence has been placed by the plaintiffs to show that the possession of the defendants over the suit lands traceable as tenancy. They failed to establish the induction of the defendants into possession on the strength of tenancy. Admittedly, the defendants were in possession much prior to 1988 and when plaintiffs failed to establish the induction of the defendants into the possession on the basis of tenancy; the suit is hopelessly barred by limitation even for recovery under Article 65 of the Limitation Act.

11. From Ex.B1 to B16, it is clear that the defendants got mutations with effect from 1988 onwards and they have been granted title deeds and patta passbooks. The presumption under the ROR Act is that the title deeds and passbooks were issued after due enquiry by the Revenue Authorities. Till date, the mutations entries were not impeached in any Statutory Forums created under ROR Act. From the date of entry in the revenue records, there is deemed knowledge to the plaintiffs about the adverse title set up by the defendants. The suit is filed in the year 2009. Therefore, the suit is hopelessly barred by limitation. However, Courts below considered limitation on the assumption that suit is barred by limitation for declaration. In fact, the suit is also barred by limitation for recovery of possession.

12. The conduct of PWs 2 and 3 show that they sold the property to various persons by SADA sale deeds. If this has been given some credence, the defendants plea of their purchase by SADA sale deed can also be believed. In fact, both the Courts have believed such aspect and basing on the said aspects, the Courts held that the decrees passed by the District Munsiff at Nakrekal was not result of any fraud and such findings rendered by the Courts below is not resulting from any perversity, but on

the basis of plausible conclusion. On appreciation of entire findings of both the Courts with reference to the evidence on record, I do not find any perversity in the findings. There is no substantial question involved in this appeal. Hence, the appeal is liable to be dismissed.

13. Accordingly, the appeal is dismissed. There shall be no order as to costs.

14. As a sequel, pending miscellaneous applications, if any, shall stand closed.

M. LAXMAN, J

DATE:23.09.2022
Vsl/BDR